Supreme Court, U. S.
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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1976

No. 76-1431

DANIEL HOBBY ..... *Petitioner*

vs.

STATE OF ARKANSAS ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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DANIEL HOBBY ..... *Petitioner*

vs.

STATE OF ARKANSAS ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

Petitioner, Daniel Hobby, respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Arkansas, entered on December 20, 1976, with rehearing denied on January 17, 1977.

OPINION BELOW

The Arkansas Supreme Court entered its judgment affirming Petitioner's convictions on December 20, 1976, and denied the Petitioner's request for rehearing on January 17, 1977. A copy of the Court's per curiam Orders,

which are not to be recorded officially, are attached hereto as exhibits.

JURISDICTION

On December 20, 1976, the Supreme Court of Arkansas entered Judgment affirming Petitioner's convictions in the Circuit Court of Crittenden County, Arkansas, of five (5) counts of violation of the Arkansas Controlled Substances Act, Ark. Stats. Ann. 82-2601 et seq. (1973 Supp.).

Jurisdiction to review the judgment of the Supreme Court of Arkansas is conferred upon this Court by Title 28, *U.S.C.* §1257.

QUESTIONS PRESENTED FOR REVIEW

1. Was Daniel Hobby's criminal conviction, which was based upon the uncorroborated testimony of an informer who was paid on a contingent fee basis, a denial of Daniel Hobby's right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution?

2. Was the failure of the Arkansas Supreme Court, on a purely procedural ground, to address itself to a question of subject matter jurisdiction a denial of Daniel Hobby's right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution?

3. Was Daniel Hobby's conviction of the sale of marijuana under an equivocal Arkansas penal statute a denial of his right to be informed of the nature and cause of the accusation against him, and thus due process of law, under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution?

(NOTE: Page references are to the transcript prepared by the Clerk of the Supreme Court of Arkansas, which comprises the record in this cause and is forwarded along with this Petition.)

COURT RULES, CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. *United States Constitution,* Amendment V: "No person shall . . . be deprived of life, liberty or property, without due process of law; . . ."

2. *United States Constitution,* Amendment VI: "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; . . ."

3. *United States Constitution,* Amendment XIV, Section 1:

"******

No state shall . . . deprive any person of life, liberty, or property, without due process of law; . . ."

4. Volume 3A Ark. Stats. Ann. (1975 Supp.) — *Arkansas Supreme Court Rules,* Rule 7:

"******

"(a) . . . Appellant shall, within forty (40) days of lodging the record, file . . . . . his abstract and brief with the Clerk of this Court. . ."

"(b) . . . Appellee shall file . . . his brief . . . within thirty (30) days after Appellant's abstract and brief are filed. . ."

"(c) . . . Appellant may file . . . a reply brief within fifteen (15) days after Appellee's brief is filed. . ."

****

"(f) . . . Any request for extension of time for the filing of any brief must be made by written motion, addressed to the Court, setting forth the facts supporting the request . . . Counsel who delay in filing of such motion until it is too late for the brief to be filed if the motion is denied do so at their own risk."

5. Volume 7A of Ark. Stats. Ann. (1973 Supp.) — *Uniform Substances Act*:

ARTICLE 1

82-2601. UNIFORM CONTROLLED SUBSTANCES ACT — Definitions. — As used in this Act (sections 82-2601 — 82-2638):

* * * * * * * *

(d) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of Article II of this Act.

ARTICLE II

* * * * * * * *

82-2614. SCHEDULE VI ESTABLISHED. — There is hereby established a Schedule VI for the classification of those substances which are determined to be inappropriately classified by placing them in Schedules I through V. Schedule VI includes controlled substances listed or to be listed by whatever official name, common or usual name, chemical name or trade name designated. (Acts 1973, No. 186, . . .)

* * * * * * * *

82-2614.2 SUBSTANCES IN SCHEDULE VI. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, whether produced directly or indirectly from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, which contains any quantity of the following substances, or which contains any of their salts, isomers, and salts of isomers when-

ever the existence of such salts, isomer, and salts isomers is possible within the specific chemical designation are included in Schedule VI:

1. Marijuana
2. Tetrahydrocannabinal. (Acts 1973, No. 186, . . .)

ARTICLE IV

82-2617. CRIMINAL PENALTIES. — (a) Except as authorized by this Act (sections 82-2601 — 82-2638), it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

* * * * * * * *

(ii) any other controlled substance classified in Schedule I, II, III, or VI is guilty of a felony and upon conviction may be imprisoned in the state penitentiary for not less than three (3) years nor more than ten (10) years, fined not more than $15,000.00, or both.

STATEMENT OF THE CASE

Daniel Hobby was charged by the State of Arkansas by informations with five (5) counts of violation of the Arkansas Controlled Substances Act, the offenses alleged to have occurred on October 20, 1974 (R. 4), October 24, 1974 (R. 13), October 28, 1974 (R. 10), November 17, 1974 (R. 1), and January 9, 1975 (R. 7), four (4) of which allegedly involved the sale of marijuana and one (1) the sale of amphetamines. He was sentenced to four (4) years on each count with three (3) consecutively and two (2) concurrently. The only evidence to connect Daniel Hobby with the alleged offenses was the testimony of the State's informer, James "Junior" Skaggs, who openly admitted that he was paid by the West Memphis, Arkansas Police Department for his services at the rate of Ten Dollars ($10.00) each for every "buy" that he reported to the Department. (R. 108, 120-124).

The only testimony by the State to corroborate the informer's testimony was that offered by one (1) Detective regarding the October 20, 1974 allegation; and on that occasion the Detective testified that he remained outside of a particular mobile home and, although listening to the alleged transaction via electronic surveillance equipment, the Detective testified that he neither saw Daniel Hobby nor recognized his voice. (R. 138). On the remainder of the occasions for which Mr. Hobby was charged, the only evidence presented that an offense had been committed on those occasions was the uncorroborated testimony of the State's informant, Junior Skaggs. This testimony was specifically denied by Mr. Hobby through his testimony.

Subsequent to Hobby's conviction, but during his appeal, affidavits of certain individuals were produced,

which indicated that Junior Skaggs had fabricated certain alleged "buys". These affidavits were appended to Hobby's Motion for Extension of Time to File Brief, which was granted by the Arkansas Supreme Court. A copy of the Motion and Affidavits are not a part of this record, due to the fact that they are apparently not kept of record after they are ruled upon by that Court. (A. p. 38). The Arkansas Supreme Court extended Hobby's time to file an amended brief, ultimately until October 1, 1976, for the purpose of allowing Hobby to present to the Crittenden County grand jury the possibility of perjury on the part of the State's informer, Junior Skaggs. The grand jury, however, did not convene until October 8, 1976.

On October 29, 1976, Daniel Hobby filed an amended brief, which did not mention the subject of perjury but rather attacked the subject matter jurisdiction of the Court by alleging that a felony conviction could not be had for the sale of marijuana under the State statutes in force at the time of the alleged offenses. Although having already filed a response to the amended brief, the Arkansas Attorney General moved to strike the amended brief on the basis that it was untimely filed and that the issues presented were not those for which the extension of time was granted; the motion being sustained by the Arkansas Supreme Court in its opinion affirming Hobby's conviction. (R. 236).

In his Petition for Rehearing, Daniel Hobby specifically alleged denial of due process and other federal constitutional rights, and raised the question of the jurisdiction of the Court and the constitutionality of the entire procedure by which he was arrested and convicted. (R. 237). The Petition for Rehearing was denied on January 17, 1977. (R. 239).

REASONS FOR GRANTING THE WRIT

I.

THE USE OF A CONTINGENT FEE INFORMER IN THIS CASE WAS A VIOLATION OF THE DEFENDANT'S RIGHT TO DUE PROCESS OF LAW.

The only testimony presented against Daniel Hobby was the testimony of a police informant, Junior Skaggs. Skaggs' testimony was that he was employed by the West Memphis, Arkansas, Police Department over a several month period in 1974 and 1975 on a contingent fee arrangement, whereby he received Ten Dollars ($10.00) for each "buy" that he reported to the police. (R. 108). No justification for this type of contingent fee arrangement was ever produced in testimony by the State of Arkansas. Furthermore, the only attempt by the State to corroborate Skaggs' testimony was by the testimony of a Detective, who testified that he neither saw Hobby nor recognized Hobby's voice at the time of the alleged occurrence on October 20, 1974. (R. 138). On the remainder of the occasions for which Hobby was charged, the only evidence presented that he had committed an offense on those occasions was the uncorroborated testimony of Skaggs. This testimony was specifically denied by Hobby through his testimony.

Subsequent to Hobby's conviction on October 14, 1975, affidavits were produced from several persons, which indicated that not only had Skaggs' testimony at Hobby's trial been perjured, but also that Skaggs had been fabricating "buys" during his employment as an informer in order to obtain additional moneys from the Police. These affidavits were attached to Hobby's Motion for Extension of Time to File Brief, which was subsequently granted by the Arkansas Supreme Court. (A. p. 38).

The due process implications of a contingent fee informer were first spelled out in *Williamson v. United States*, 311 F. 2d 441 (Fifth Cir. 1962), *cert. den.*, 381 U.S. 950. In that case the Court stated that where there was no testimony that the informer was instructed on the law of entrapment and no justification given for the contingent fee arrangement, then such a type of contingent fee arrangement could not be condoned because it constituted prima facie evidence of government wrong doing. Relying on *McNabb v. United States*, 318 U.S. 332, 63 S. Ct. 608, 87 L. Ed. 819 (1943), and its progeny, the appellate court found that a conviction based on this informer's evidence could not be sustained, as the government's action violated defendant's right to due process of law.

Although it is recognized that a number of jurisdictions have severely limited the Williams' doctrine, see 13 ALR Fed. 905, it is submitted that the complete lack of control of the activities of the informer in Hobby's case, together with the post-conviction information obtained regarding the informant's conduct, all of which was presented to the Arkansas Supreme Court, is sufficient to merit the granting of certiorari by this Court and the reversal of Hobby's conviction and an award of a new trial for him in the interest of justice.

II.

DENIAL OF DUE PROCESS FOR A STATE COURT TO PRECLUDE, ON A PURELY PROCEDURAL GROUND, JUDICIAL REVIEW OF A QUESTION OF SUBJECT MATTER JURISDICTION.

Daniel Hobby sought and obtained from the Arkansas Supreme Court an extension of time to file an amended brief. His request was based upon his newly discovered knowledge of the affidavits of several individuals impuning the testimony and veracity of the State's informer, Junior Skaggs. In his request, Hobby stated that he would present evidence to the Crittenden County Grand Jury in an attempt to obtain a perjury indictment against his accusor, Junior Skaggs. As a result, the Arkansas Supreme Court extended Hobby's time until October 1, 1976, within which to file an amended brief. However, for reasons beyond Hobby's control, the Crittenden County Grand Jury did not convene until October 8, 1976.

Subsequent to Hobby's filing of his original brief, the Arkansas Supreme Court handed down its decision in *White v. State*, —— Ark. ——, 538 S.W. 2d 550 (1976), a decision which did not appear in the advance sheets of the South West Reporter until August 24, 1976. In that case, the Court interpreted the Arkansas Controlled Substances Act as precluding a misdemeanor conviction for possession of marijuana, because the Act did not sufficiently proscribe such conduct. That was the same Act under which Daniel Hobby was convicted in the trial court.

Expounding on the Court's reasoning in *White*, supra, Hobby filed an amended brief on October 29, 1976, attacking the subject matter jurisdiction of the trial court to convict him for the sale of marijuana under that law. On

November 12, 1976; the Arkansas Attorney General filed their reply brief to Hobby's amended brief. In addition, the Attorney General filed a Motion to Strike Hobby's amended brief on the grounds that (1) it was untimely filed, and (2) because it did not pertain to perjury, the reason for which the extension had been granted initially. (A. p. 27). It should be noted that no where in the record is there anything to indicate that the State was in any way prejudiced by the filing of the amended brief by Hobby. In its opinion affirming Hobby's conviction, the Arkansas Supreme Court sustained the State's Motion to Strike Hobby's amended brief and refused to decide the issue of the subject matter jurisdiction of the court to convict for the sale of marijuana. (R. 230-236).

In *Henry v. State of Mississippi,* 253 Miss. 263, 174 So. 2d 348, 85 S. Ct. 564, on remand from *Henry v. Williams,* 299 F. Supp. 36 (DC Miss. 1969), it was held that where a state ground is purely procedural, the Supreme Court will act upon fundamental constitutional rights, unless the State's insistence on compliance with its procedural rule serves a legitimate State interest. In the case before the bar, there is nothing to show that the State was in any manner prejudiced by Hobby's amended brief. In fact, the Arkansas Attorney General had already answered the brief, but the Arkansas Supreme Court declined to decide the issue.

It is well settled that the question of subject matter jurisdiction can be raised at anytime, even on appeal. *Powell v. Alabama,* 287 U.S. 45 (1932). Furthermore, crimes are not to be created by inference, and they may not be constructed nunc pro tunc. *United States v. Laub,* 385 U.S. 475, 487 (1967).

By his amended brief, Hobby was merely trying to have the Arkansas Supreme Court apply the same logic and reasoning to his case that had been applied in *White,* supra. This request was not without merit, since courts are not at liberty to ignore the shortcoming of the statutory language, or rationalize its validity. *Ricks v. United States,* 414 F. 2d 11 (DC Cn., 1968). Similarly, it is indisputably fundamental that the criminality of an act must be judged in the light of the law applicable at the time the act is committed. *United States v. Nill,* 518 F. 2d 793, 799 (Fifth Cir., 1975).

For these reasons, it is respectfully submitted that certiorari should be granted and that the Petitioner, Daniel Hobby, should be given an adequate review of his claim of lack of subject matter jurisdiction.

III.

A CRIMINAL CONVICTION UNDER A STATE PENAL STATUTE, WHICH IS EQUIVOCAL IN NATURE, IS THE DENIAL OF AN INDIVIDUAL'S RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM AND DUE PROCESS OF LAW.

Daniel Hobby was convicted of violation of the Arkansas Uniform Controlled Substances Act in effect at the time of the alleged offenses, which is reflected in Arkansas Act 590 of 1971, as amended by Act 186 of 1973, the applicable text of which is set forth above in the appropriate sections of Ark. Stats. Ann. 82-2601 et seq. (Supp. 1973).

In *White v. State,* supra, the Arkansas Supreme Court applied the strict construction rule to the statutes in

question in this case and concluded that marijuana was not within the statutory classification of "controlled substances" for misdemeanor purposes. Without arguing in great depth on the merits of the issue, suffice it to say at this point that the controversy centers around the fact that the Arkansas Legislature did not include schedule VI in its definition of "controlled substances", and marijuana was listed in schedule VI.

Ordinarily a formal accusation, which charges some offense known to law, is essential for every trial for crime, without which the court acquires no jurisdiction to proceed. 22 C.J.S. "Criminal Law" Section 143, 380 (1961). Crimes are not to be constructed by inference, nor may they be constructed nunc pro tunc. *U.S. v. Laub,* supra. Courts are not at liberty to ignore the shortcoming of statutory language, or rationalize its validity. *Ricks v. U.S.,* supra. Finally, it is indisputably fundamental that the criminality of an act must be judged in the light of the law applicable at the time the act is committed. *U.S. v. Nill,* supra.

An in-depth examination of the statutory language in question will reveal that marijuana was not included within the meaning of the term "controlled substances", and that the statutory penalties involved only violations pertaining to "controlled substances". The issue raised at the lower court clearly goes to its subject matter jurisdiction and should have been reviewed by that court. Instead, the Arkansas Supreme Court chose not to decide the issue. It is respectfully submitted that certiorari should be granted and that an appropriate review of the subject matter jurisdiction of the lower court should be made.

CONCLUSION

For the foregoing reasons, Petitioner, Daniel Hobby, requests that a Writ of Certiorari issue to review the judgment of the Arkansas Supreme Court.

Respectfully submitted,

DANIEL HOBBY, Petitioner

By: THOMAS G. MONTGOMERY
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Attorney for Petitioner

CERTIFICATE OF SERVICE

I, one of the attorneys for the Petitioner, Daniel Hobby, state that I have served a copy of the foregoing pleading on the attorney of record, by depositing a copy thereof, postage prepaid, in the United States Mail and addressed as follows:

Mr. William Clinton
Attorney General
State of Arkansas
Justice Building
Little Rock, Arkansas 72201

this —— day of ————————, 1977.

————————————

Appendix

DIVISION 2
SUPREME COURT OF ARKANSAS
No. CR 76-104

DANIEL HOBBY, *Appellant*	Appeal from Crittenden County Circuit Court,
VS.	HON. GERALD PEARSON, *Circuit Judge*
STATE OF ARKANSAS, *Appellee*	Affirmed.

CARLETON HARRIS, *Chief Judge*

Appellant, Daniel Hobby, was convicted by a Crittenden County jury on five counts of violation of the Arkansas Controlled Substance Act, being convicted of sales allegedly made on October 20, 24, 28, and November 17, of 1974, and January 9, 1975. A sentence of four years on each count was recommended by the jury, and the court sentenced Hobby in accordance with the recommendations, but provided that three of the sentences should run consecutively and two concurrently, making a total of 12 years to be served in the Department of Correction. From the judgment so entered, Hobby brings this appeal, and for reversal asserts eight alleged errors which we proceed to discuss, though, for convenience, not in the order listed. We will number the points as they appear in the appellant's brief.

VII.

THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT A CONVICTION FOR THE CRIMES CHARGED.

According to the theory of the State, the sales and deliveries occurred on the five different dates mentioned, Junior Skaggs, an informant working with the police, testifying that he made three purchases from Hobby. On January 9 (date of one of the alleged violations), the testimony reflected that Sgt. Jerry Hubbard and Officer Mike Carter of the City Police Department searched Skaggs to insure that he had no drugs in his possession, took all money from the witness, and then provided him with funds to make a drug purchase; he was equipped with a radio transmitter. The two officers followed Skaggs to a trailer park where they saw him enter a trailer and heard him negotiate a drug purchase. The officers stated that they could hear a male voice talking to Skaggs, but could not identify the voice. When Skaggs left the trailer, he was kept in view and followed a short distance from the trailer park where the agent turned over to the officers two lids of marijuana subsequently identified in court. The cases of the State on the other four charges (three marijuana and one amphetamine) were based on the testimony of the informant who testified that he had purchased substances from Hobby and turned over to the officers that which he had purportedly purchased. Appellant argues that evidence consisting solely of the uncorroborated testimony of a police informant is insufficient to support a conviction. Appellant cites no authority for such contention, but actually there was corroboration to some degree. Hobby admitted that he had sold marijuana to Skaggs in October, 1974, but said that he did not sell it on the particular dates

charged. He stated he did not know when he had sold to Skaggs but knew that he didn't make sales on those five dates. On the charge of selling on January 9, 1975, Hobby stated that he was at home; subsequently he stated that he was working those times. On cross-examination, he admitted that it would have been possible to have made sales before or after he went to work. No other witness testified, nor was any evidence offered, that Hobby was at work on those particular dates. Hobby also admitted that he had told the officers that he "sold a nickel bag every time he needed a little money." The evidence was sufficient to sustain the conviction.

I.

THE TRIAL COURT ERRED BY SUSTAINING THE STATE'S OBJECTION TO THE APPELLANT'S CROSS-EXAMINATION OF THE STATE'S INFORMANT REGARDING SAID INFORMANT'S CONTACT WITH THE WEST MEMPHIS POLICE DEPARTMENT PRIOR TO BECOMING AN INFORMANT; AND THE TRIAL COURT FURTHER ERRED BY STRIKING FROM EVIDENCE AND ADMONISHING THE JURY TO DISREGARD ALL CROSS-EXAMINATION OF THE INFORMANT, REGARDING ALL PRIOR TRAFFIC-RELATED AND JUVENILE OFFENSES OF SAID INFORMANT.

It is argued that appellant was convicted upon the uncorroborated testimony of the police informant, this informant not being a trained, regularly employed police officer, but rather an "itinerant member of a drug community who was paid by the West Memphis Police

Department at the rate of $10.00 for each 'buy' that he allegedly made." During cross-examination[1] of this witness, Skaggs was asked if he had ever had any contact with the West Memphis police before (the present occurrence). When asked what was meant, counsel stated, "Well, I mean just exactly what I said. Had you ever seen or had contact with any member of the West Memphis Police Department before you started being a so-called informer?" Upon objection being made, defense counsel stated that he was leading up to introducing a criminal record. The court sustained the objection after the prosecutor suggested that defense counsel could ask about criminal convictions. In response to continued cross-examination, Skaggs admitted that he had been convicted of driving while under the influence of intoxicating liquor, carrying a concealed weapon, drunk and disorderly, minor possessing intoxicants, speeding, and having no driver's license; he also admitted a conviction for operating a vehicle with his license suspended and was asked if he had been convicted of petit larceny in the juvenile court. The record then reveals the following:

> "MR. BURNETT: (For the State) Your Honor, I'm going to object to all of it at this point now that Mr. Davis has had an opportunity to go through. I would object to all of the traffic violations and any juvenile record this man has as going to his credibility and ask that the jury be admonished to disregard it. I don't think it is proper.
>
> "THE COURT: Ladies and gentlemen, any violation of or conviction of any traffic offense, which includes driving while under the influence of intoxicants by the

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[1]Counsel on this appeal is not the same counsel who tried the case.

laws of the State of Arkansas, may not be used to test the credibility of a witness. It will be stricken from the evidence and you will be admonished to disregard it. Any violation as a juvenile may not be used to test the credibility of the witness. It will be stricken from the evidence and the jury will be admonished to disregard it."

Of course, the question relating to any contact with the West Memphis Police Department is rather vague, and was not a proper question since one cannot be impeached by inquiries as to whether he has been arrested, charged, or indicted for a crime, and this question could have included an arrest or charge. See *Reddell v. State*, 216 Ark. 197, 224 S.W. 2d 812, and cases cited therein. At any rate, defense counsel stated that he was wanting to bring up a criminal record, and he was then permitted to conduct a vigorous cross-examination relative to past convictions of Skaggs as a matter of testing his credibility. The court was correct in striking the answers relating to traffic offenses and juvenile violations. As to the former, see Ark. Stat. Ann. §75-1012 (1975 Supp.); as to juvenile violations see Ark. Stat. Ann. §45-205 (1965 Repl.).[2] Of course, there were still several convictions admitted which the jury could consider on the question of credibility.

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[2]This was the Act in effect at the time of Hobby's trial, but a similar provision is found in §44 of the new Arkansas Juvenile Code. See Ark. Stat. Ann. §45-444 (1975 Supp.).

II.

THE TRIAL COURT ERRED BY INTERROGATING THE APPELLANT IN THE PRESENCE OF THE JURY REGARDING THE APPELLANT'S KNOWLEDGE OF THE VERNACULAR MEANING OF TERMS USED FOR VARIOUS QUANTITIES OF MARIJUANA AND THEIR RESPECTIVE PRICES.

The record does not reflect that any objection was made to the Trial Court's questions of the witness. Of course, there being no objection, or request for the trial court to take any corrective action, the issue may not be raised for the first time on appeal. See *Tarkington v. State*, 250 Ark. 972, 469 S.W. 2d 93; *Kimble v. State*, 246 Ark. 407, 438 S.W. 2d 705.

III.

THE TRIAL COURT ERRED BY COMMENTING ON THE EVIDENCE IN THE PRESENCE OF THE JURY.

Here again, no objection was made to inquiries made by the court and what was said under Point II likewise applies here.

IV.

THE TRIAL COURT ERRED BY SUSTAINING THE STATE'S OBJECTION TO THE APPELLANT'S INQUIRING OF HE APPELLANT'S WITNESS' KNOWLEDGE OF PRIOR ILLEGAL MARIJUANA SALES BY THE STATE'S INFORMER.

On cross-examination of Junior Skaggs, he was asked if, in fact, he was making his living by selling drugs, and

further that, in effect, the city had offered him an opportunity to get rid of his competition (through his undercover activity). To both questions Skaggs replied, "No, sir." Appellant's counsel then called Billy Franks as a witness and inquired of him whether Skaggs had ever attempted to sell the witness marijuana. The prosecuting attorney objected and the trial court sustained the objection. Error is asserted. Since no proffer of what the witness would answer was made, we are unable to consider the contention.

V.

A CRIMINAL CONVICTION CANNOT BE BASED SOLELY UPON THE TESTIMONY OF A POLICE INFORMANT, WHO IS PAID BY THE POLICE ON A "PER BUY" BASIS.

This asserted error was covered under Point VII, and there is no need for further discussion, other than to say that the affidavits referred to by appellant, which were not given until several months after the trial, are no part of the case now before us, and can be given absolutely no consideration.

VI.

A CRIMINAL CONVICTION CANNOT BE BASED UPON THE TESTIMONY OF A STATE'S WITNESS WHO COMMITS PERJURY AT THE TRIAL OF THE ACCUSED AND/OR AT SUBSEQUENT TRIALS, REGARDING SIMILAR TESTIMONY; AND THE PROSECUTING ATTORNEY HAS A DUTY TO INFORM THE APPROPRIATE AUTHORITY OF AFTER-ACQUIRED OR OTHER INFORMATION THAT CAST DOUBT UPON THE CORRECTNESS OF A CONVICTION.

Again, the affidavits referred to in Point V are relied upon, and what was said under that point applies here. It might be added that at no time did appellant file a motion for a new trial.

VIII.

THE TRIAL COURT ERRED BY REQUIRING TO BE SERVED CONSECUTIVELY JURY-IMPOSED SENTENCES UPON MULTIPLE CONVICTIONS WHICH WERE TRIED SIMULTANEOUSLY.

Appellant concedes that the imposition of consecutive or concurrent sentences lies within the sound discretion of the trial court. Ark. Stat. Ann. §43-2311 (Repl. 1964) provides that the sentence imposed on a defendant who is convicted of two or more offenses shall run consecutively; however, the very next section empowers the trial judge to order that multiple sentences be served concurrently when it is deemed best for society and the person convicted. Accordingly, the trial court actually lessened the punishment which could have been imposed upon Hobby. At any rate, we find no abuse of discretion.

On June 11, 1976, appellant filed a motion for extension of time to file his brief, and for cause of his petition stated

that affidavits had been obtained from several people, directly conflicting with the testimony given by Skaggs at Hobby's trial; that he did not know whether perjury charges would be filed against Skaggs, and that it was his intention in case the prosecuting attorney did not file charges, to present all available information to the Crittenden County Grand Jury; that a judicial determination of whether the appellant was convicted upon perjured testimony was critical to the appellant's appeal, and the extension of time was prayed. On June 25 this Court granted an extension until August 10, but on August 6 appellant sought and was granted an extension (by a justice of this Court during the recess) to file an amended brief, being given until October 1. The main brief was filed on August 10, but the amended brief was not filed until October 29, 28 days late. The State moved to strike the brief for two reasons, first because it had not been filed within the time granted, and second, that the extension of time was granted on the basis of the fact that such extension was necessary for the completion of an inquiry regarding the alleged perjury. The subject of the perjury is not mentioned in this amended brief, but rather is an argument that a felony conviction cannot be had for the sale of marijuana under the statutes in force at the time of the alleged marijuana sales by appellant. The State is correct in its contention for the argument is entirely extraneous to the reason for which additional time was requested, and for which additional time was granted. The State's motion is granted.

For the reasons set out in this opinion, the judgment is hereby affirmed.

IT IS SO ORDERED.

We agree. Byrd, Holt, and Roy, JJ.

IN THE SUPREME COURT OF ARKANSAS

DANIEL HOBBY ..... *Appellant*

VS. No. CR-76-104

STATE OF ARKANSAS ..... *Appellee*

APPELLANT'S ANSWER
TO APPELLEE'S MOTION TO STRIKE

Comes the Appellant, Daniel Hobby, by his attorney, Thomas G. Montgomery, and for his Answer, alleges and states:

1. In his amended brief, the Appellant makes considerable reference to the enlightened decision of this Supreme Court in *White v. State*, —— Ark. ——, 538 S.W. 2d 550 (1976), a decision which did not appear in the South West Reporter 2d until August 24, 1976, advance sheet, which was subsequent to the filing of the Appellant's original brief herein;

2. That the issue raised in the Appellant's amended brief addresses itself solely to the jurisdiction of the trial court; an issue which can be raised at any time;

3. The Appellee, although having already filed its reply to the Appellant's amended brief, would have this Court for purely procedural reasons forego review of the jurisdiction of a trial court to convict an individual and sentence him to incarceration in the penitentiary;

4. Furthermore, to raise a purely procedural point, the Appellant would note that the Appellee in its Motion to Strike did not provide the Appellant with a "memorandum of Authorities", as required by Rule 3 of the Supreme Court Rule in Volume 3A (1975 Supp.).

WHEREFORE, premises considered, the Appellant prays that the Appellee's Motion to Strike be denied and that this Supreme Court of Arkansas review the issue of the trial court's jurisdiction to convict the Appellant of a felony, and for all other relief to which the Appellant might be entitled.

Respectfully submitted,

By: /s/ THOMAS G. MONTGOMERY
Thomas G. Montgomery
Attorney at Law
P.O. Box 781
West Memphis, Arkansas 72301

Attorney for Appellant

MEMORANDUM BRIEF IN SUPPORT OF APPELLANT'S ANSWER TO APPELLEE'S MOTION TO STRIKE

The Appellant, Daniel Hobby, cites the following authority for his Memorandum Brief in Support of Appellant's Answer to Appellee's Motion to Strike:

1. White v. State, —— Ark. ——, 538 S.W. 2d 555 (1976).

2. Rule 3 of the Supreme Court Rule, paragraph (e).

Respectfully submitted,

By: /s/ THOMAS G. MONTGOMERY
Thomas G. Montgomery

Attorney for Appellant

CERTIFICATE OF SERVICE

IN THE SUPREME COURT OF ARKANSAS

DANIEL HOBBY ..... *Appellant*

vs. No. CR-76-104

STATE OF ARKANSAS ..... *Appellee*

MOTION TO STRIKE

Comes now the appellee, the State of Arkansas, by and through the Attorney General, Jim Guy Tucker, and for its Motion to Strike states:

I.

Appellant filed a Motion for an Extension of Time to file his brief on June 11, 1976 alleging that a State witness had committed perjury in testifying against appellant and that appellant needed the additional time to allow the Prosecuting Attorney of Crittenden County to complete an investigation or alternatively to allow appellant's attorney to present the matter to the Crittenden County Grand Jury. By an order of this Court entered on August 6, 1976, appellant was granted an extension of time until October 1, 1976, to file an amended brief. Appellant's abstract and brief was filed with the clerk on August 10, 1976. Appellee's brief was filed on October 5, 1976, four days after the expiration of the extension which appellant had been granted. Appellant filed an amended brief on October 29, 1976. In light of the failure of appellant to file his amended brief within the time granted, that brief should be struck and not considered by this Court.

II.

Appellant's Motion for an Extension of Time was predicated on the claim that the extension was necessary to allow for the completion of an inquiry regarding alleged perjury by a State witness at appellant's trial. The amended brief filed on October 29th contains no reference to the allegations set forth in the Motion for Extension of Time, but rather attempts to raise a statutory construction argument which could and should have been raised in appellant's original brief. Appellant is not entitled to raise in the amended brief and to have this Court consider an argument that is totally extraneous to the allegations on which he justified the request for additional time to file an amended brief in this cause.

WHEREFORE, appellee submits, for the reasons set out above, that this Court should strike the First Amendment to Abstract and Brief for Appellant.

Respectfully submitted,

JIM GUY TUCKER
Attorney General

By: /s/ SAM I. BRATTON, JR.
Assistant Attorney General
Justice Building
Little Rock, Arkansas 72201

Attorney for Appellee

CERTIFICATE OF SERVICE

IN THE SUPREME COURT OF ARKANSAS

DANIEL HOBBY ..... *Appellant*

VS. No. CR-76-104

STATE OF ARKANSAS ..... *Appellee*

RESPONSE TO MOTION FOR PERMISSION TO FILE AMENDED APPELLANT'S BRIEF

Comes now appellee, the State of Arkansas, by and through the Attorney General, Jim Guy Tucker, and for its Response to Motion for Permission to File Amended Appellant's Brief, states:

I.

Appellant has moved that this Court grant him permission to amend the brief which has yet to be filed and that he be granted approximately 50 days in which to so amend that brief and states the cause for that needed extension of time and needed amendment is so that he can pursue his own speculation with regard to the alleged perjury committed by a State's witness.

II.

That this Court has a directive to expedite the determination of criminal cases and that directive should not be disregarded without substantial cause.

III.

That to ask this Court to delay the briefing schedule and appellate review of a case purely upon the conjecture

of appellant's attorney as to whether or not the prosecuting attorney or whether or not the grand jury will go forward in investigation of the alleged informant with regard to perjury is to ask this Court to act without substantial cause.

IV.

That even were the State's witness to subsequently be investigated, accused or even convicted of perjury it would not necessarily have any effect upon the validity of appellant's conviction herein and in the occasion that it did appellant has adequate remedies available to him in which to rectify any harm that might have been done.

WHEREFORE, appellee submits that this Court should deny appellant's motion to amend and to extend the time for his brief for failure to state substantial reasons for that requested action.

Respectfully submitted,

JIM GUY TUCKER
Attorney General

By: /s/ GARY ISBELL
Assistant Attorney General
Justice Building
Little Rock, Arkansas 72201

Attorneys for Appellee

CERTIFICATE OF SERVICE

IN THE SUPREME COURT OF ARKANSAS

DANIEL HOBBY ..... *Appellant*

VS. No. CR-76-104

STATE OF ARKANSAS ..... *Appellee*

MOTION FOR PERMISSION TO FILE AMENDED APPELLANT'S BRIEF

Comes now the Appellant, Daniel Hobby, and for his Motion herein, alleges and states:

1.

That by Motion dated June 10, 1976, the Appellant did request that this Court grant him an extension of time within which to file his Brief herein; said Motion stating that the Appellant was awaiting either the filing of an Information by the office of the Prosecuting Attorney for the Second Judicial District, charging with perjury James Skaggs, the State's witness upon whose testimony the Appellant was convicted, or the opportunity by the Appellant to present evidence of James Skaggs' perjury at the Appellant's trial to the Crittenden County Grand Jury;

2.

That on or about June 25, 1976, this Supreme Court of Arkansas did grant the Appellant's Motion referred to in the preceding paragraph and extended until August 10, 1976, the time within which the Appellant must lodge his Brief herein;

3.

That on July 31, 1976, the Appellant did forward his Brief by certified mail to the printer, but that the Appellant had neither received a final determination from the

Prosecuting Attorney's office with regard to their intentions to file or not to file against James Skaggs for perjury at the Appellant's trial, nor has the Crittenden County Grand Jury met;

4.

That the Crittenden County Circuit Court, Criminal Division, convenes on September 20, 1976, but it is unknown to the Appellant at this time when the Grand Jury will be called into session;

5.

That the Appellant was convicted solely upon the testimony of James Skaggs, and the Appellant would like to reiterate the importance of a determination of the validity of James Skaggs' testimony at the Appellant's trial.

WHEREFORE, Premises considered, Appellant prays that this Supreme Court of Arkansas allow the Appellant to amend his Brief herein and that he be given until October 1, 1976, to do so; and for all other just and proper relief to which the appellant might be entitled.

Respectfully submitted,
DANIEL HOBBY, Appellant

By: /s/ THOMAS G. MONTGOMERY
Attorney at Law
Post Office Box 781
West Memphis, Arkansas 72301

VERIFICATION

CERTIFICATE OF SERVICE

IN THE SUPREME COURT OF ARKANSAS

DANIEL HOBBY ..... *Appellant*

VS. No. CR-76-104

STATE OF ARKANSAS ..... *Appellee*

RESPONSE TO MOTION FOR EXTENSION OF TIME

Comes the State of Arkansas, appellee, by and through the Attorney General, Jim Guy Tucker, and for Response to Motion for Extension of Time, states:

I.

That the appellee has not provided any proof, by way of affidavit or otherwise, to either this Court nor to the Prosecuting Attorney for the Second Judicial District which would support the claim that perjury was committed in appellant's trial.

II.

That without specifically connecting the allegedly perjurious testimony of the narcotics agent to the case at bar the appellant has made motion strictly upon unfounded supposition and conjecture.

III.

That the affiants in support of appellant's motion herein have adamantly refused to cooperate with the Prosecutor's office in its attempt to investigate the alleged charges either by failing to appear when requested, by asserting Fifth Amendment rights by advice of counsel, and by refusing to answer questions or supply more specific information on an informal basis.

IV.

That, at present, the charges made against the police agent are unsubstantiated and, as such, are improper considerations for this Court's deliberations.

V.

On the basis of the affidavits in appellant's motion the appellee can only assume that the police agent must have answered in the negative to questions concerning his use of narcotics and perhaps of his sale or delivery of same, but these questions, affecting credibility only, do not erase the substantive proof of the State concerning appellant's five (5) violations of the Controlled Substance Act.

VI.

That upon present information there is no basis for the filing of perjury charges and the Prosecutor will not file any until such time as the affiants cooperate by furnishing requested information.

WHEREFORE, appellee, prays for an order of this Court denying appellant's motion as alternatively pleaded and to reinstate the proper time periods for the case herein.

Respectfully submitted,

JIM GUY TUCKER
Attorney General

By: /s/ GARY ISBELL
Assistant Attorney General
Justice Building
Little Rock, Arkansas 72201

Attorneys for Appellee

CERTIFICATE OF SERVICE

AFFIDAVIT

STATE OF ARKANSAS
COUNTY OF CRITTENDEN

I, JAMES C. HALE, JR., after being duly sworn state:

That I am one of the Deputy Prosecuting Attorneys in and for Crittenden County, Arkansas (Second Judicial Circuit) and have been since October 1, 1964; that I participated in the investigation's preparation for trial and trial of the numerous "drug cases" which were prosecuted in the Crittenden Circuit Court, Criminal Division, during the past eighteen (18) months; that subsequent to the February, 1976 term of the Crittenden Circuit Court, Criminal Division, various attorneys for defendants who were convicted and sentenced to the Arkansas Department of Corrections for Violation of the Arkansas Controlled Substance Act began making allegations to the effect that one Junior Skaggs (undercover agent for the West Memphis Police Department) had perjured himself in several of the cases tried in our Circuit Court; that various Affidavits were presented to David Burnett, Prosecuting Attorney within and for the Second Judicial Circuit, wherein the affiants alleged that they had seen Junior Skaggs use and sell controlled substances prior to September, 1974 and at other times;

That on June 2, 1976, I was advised that Tom Montgomery, Attorney at Law, wanted to depose and take the deposition of various affiants who had given Affidavits to the effect that Junior Skaggs had used and sold controlled substances prior to and subsequent to September, 1974. I immediately went to Marion, Arkansas, to represent the State of Arkansas in the taking of these depositions. The affiants were represented by Kent Rubens, Attorney at

Law, and Clint Saxton, Attorney at Law, and Daniel Hobby (Appellant in the case of the State of Arkansas vs. Daniel Hobby, which is presently on appeal to the Arkansas Supreme Court) was represented by Thomas Montgomery, Attorney at Law. William C. Franks, Travis Ball and Beverly Jarman Stropes were deposed and interrogated by Mr. Montgomery and myself. A later study of the transcript of their testimony showed that they had very little information concerning specific times, places and on numerous occasions refused to answer inquiries concerning to whom Junior Skaggs allegedly had sold controlled substances, etc. None of the three affiants could testify that the substances allegedly sold by Skaggs were in fact controlled substances. A fourth affiant, Glenda Beaty, disappeared from the Courthouse while awaiting her turn to give her deposition.

On June 8, 1976, I wrote William Franks, Travis Ball and Beverly Jarman Stropes letters requesting that they contact me in order that further information could be obtained from them concerning their allegations against Skaggs. I mailed these letters certified mail, return receipt requested, deliver to addressee only. All three letters were delivered to the addressees. As of June 22, 1976, I have not been contacted by any of these three affiants. I attach copies of the letters mailed to these three affiants. On June 16, 1976, I mailed certified letters, return receipt requested, to Jackie Hodges, Bradley Walls, Peggy Walls and Glenda Beaty requesting that they contact me and give further information concerning the allegations against Junior Skaggs. I attach copies of these four letters to this Affidavit. As of June 22, I have not been contacted by any of these four affiants.

As of this date (June 22, 1976), the Prosecuting Attorney's office is looking into the allegations lodged against Junior Skaggs by these seven affiants, but have had little or no cooperation from them. As of this date, there is in my opinion, no evidence that could be used in Court in a perjury charge against Junior Skaggs or in a charge against Skaggs for sale of controlled substances. We will continue to investigate this matter to the fullest.

/s/ JAMES C. HALE, JR.

Subscribed and sworn to before me this 22nd day of June, 1976.

/s/ ROSALIE CANTRELL (MASK)
Notary Public

My Commission Expires:
July 12, 1976

IN THE SUPREME COURT OF ARKANSAS

DANIEL HOBBY ..... *Appellant*

VS. No. CR-76-104

STATE OF ARKANSAS ..... *Appellee*

MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

Comes the Appellant, Daniel Hobby, and for his Motion for Extension of Time to File his Brief herein and alleges and states:

1. That on or about October 14, 1975, the Appellant was convicted of five (5) counts of violation of the Arkansas Controlled Substances Act in Crittenden County, Arkansas, at a jury trial;

2. During the Appellant's trial, the State's case against the Appellant depended solely upon the testimony of an alleged undercover narcotics agent, James Skaggs;

3. That subsequent to the Appellant's conviction certain affidavits were obtained from Travis Ball, Jackie Hodges, Bradley Walls, Peggy Walls, Glenda Beaty and Beverly Jarman, which directly conflict with the testimony given by James Skaggs at the Appellant's trial and at other criminal trials during the same term of Court; said affidavits are attached hereto and marked Exhibits A, B, C, D, E, and F, and which are hereby incorporated in this Motion as surely as if set out word for word herein;

4. That on or about June 2, 1976, depositions were taken of William C. Franks, Travis Ball and Beverly Stropes to determine, in part at least, whether the Appellant's convictions were predicated upon perjury testimony by James Skaggs, a witness for the State;

5. That as of the date of this Motion, the Appellant has not been advised by the Prosecuting Attorney's Office for the Second Judicial Circuit as to whether criminal charges of perjury will be filed against James Skaggs regarding his testimony at the Appellant's trial; and that, in the event that the State does not elect to file said charges against James Skaggs, it is the Appellant's intention to present all available information regarding same to the Crittenden County Grand Jury when it convenes;

6. That a judicial determination of whether the Appellant was convicted upon perjured testimony is critical to the Appellant's appeal herein and central to a determination by this Supreme Court of Arkansas as to whether the Appellant should be awarded a new trial;

7. That the Appellant needs additional time to allow either the Prosecuting Attorney's Office to make its determination, regarding perjury charges against James Skaggs, or to allow the Appellant to present his information to the Grand Jury regarding same.

WHEREFORE, premises considered, Appellant prays that this Supreme Court of Arkansas grant him an extension of time to file his brief herein for the reasons set forth

hereinabove; or, in the alternative, that the trial Court be reinvested with jurisdiction to determine whether the Appellant's conviction was based upon perjured testimony; and for all other relief to which the Appellant might be entitled.

Respectfully submitted,
DANIEL HOBBY, Appellant

By: /s/ THOMAS G. MONTGOMERY
Attorney at Law
P.O. Box 781
West Memphis, Arkansas 72301

Attorney for Appellant

VERIFICATION AND
CERTIFICATE OF SERVICE

A F F I D A V I T

I, Travis Ball, after being duly sworn state:

I.

That I am 20 years old and been a resident of Crittenden County, Arkansas for 19 years.

II.

I have known Junior Skaggs since April of 1973 when he married my stepsister, Beverly Jarman.

III.

Since the time I have known him, I have witnessed Junior Skaggs both use and sell marijuana and other drugs. I have witnessed Junior Skaggs smoke marijuana at his mother's home and at the different places that Junior and Beverly have lived.

IV.

At one time Junior tried to get me to become his partner and go to Blytheville to work as a "narc", which I refused.

V.

I was in a car with Junior and Beverly one night when Junior was wired with a transmitter supplied him by the West Memphis Police Department. I distinctly remember that night. We were driving around and Junior and I were smoking marijuana and giggling and joking. I have heard that the police have a tape of that night when Junior, Beverly and I were riding around smoking marijuana.

VERIFICATION

EXHIBIT A

AFFIDAVIT

I, Jackie Hodges, after being duly sworn state:

I.

That I am 24 years old and have been a resident of Crittenden County, Arkansas for 24 years. I have known Junior Skaggs for approximately 5 years.

II.

That prior to September of 1974 I saw Junior Skaggs smoke marijuana out in front of my mother's home who was at that time living at 232 Jefferson in West Memphis. Also sometime prior to September, 1974 I purchased a lid of marijuana from Junior Skaggs at my mother's home at 232 Jefferson.

/s/ JACKIE HODGES

EXHIBIT B

AFFIDAVIT

I, Bradley Walls, after being duly sworn, state the following:

I.

That I am 18 years old and have been a resident of Crittenden County for 18 years.

II.

I have known James "Junior" Skaggs for approximately 4 years.

III.

I was riding in a car driven by Junior Skaggs sometime in August or early September of 1974, when the car was stopped by a West Memphis city police car. Jim Presley, a West Memphis policeman, thoroughly searched the care we were riding in and then took us by a house trailer at old Dacus Trailer Park and then from them Junior Skaggs and I were taken to the West Memphis Police Department and I was left downstairs and Junior Skaggs was taken upstairs to the Detective Department. Junior Skaggs was in the Detective Department for approximately thirty (30) minutes and then came down and we went home.

IV.

Prior to and subsequent to Junior Skaggs becoming an informant for the West Memphis Police Department, I personally witnessed at numerous times, Junior Skaggs smoke marijuana, take speed and Valium, and sell mari-

juana. I can remember a specific incident prior to Junior Skaggs becoming an informant where Junior Skaggs sold a pound of marijuana to someone I didn't know in the driveway of Junior Skaggs' parents' home.

V.

I was aware that Junior Skaggs was an informant with the West Memphis Police Department and during the time he was informant I witnessed Junior Skaggs at his home cut lids of marijuana he had purchased and turned people's names in and kept marijuana that he had cut from the purchase.

/s/ BRADLEY WALLS

EXHIBIT C

A F F I D A V I T

I, Peggy Walls, after being duly sworn state the following:

I.

I am 18 years old and have been a resident of Crittenden County for 7 number of years.

II.

I have know James "Junior" Skaggs for approximately 2½ years.

III.

I was aware of the fact that Junior Skaggs was an informant for the West Memphis Police Department because I was told this by Junior Skaggs and his wife Beverly and was in their home at various times when logs were being made. I personally witnessed Junior Skaggs cut two (2) lids of marijuana into three (3) lids and either keep some for himself or place another person's name down the log. Junior Skaggs would laugh and joke about how he was cheating the West Memphis Police Department and these people in getting more money by cutting the lids.

IV.

I have personally witnessed Junior Skaggs smoke marijuana both prior to his being an informant and while he was an informant. The times were so numerous that it is hard for me to give exact dates, however, I can distinctly remember seeing Junior Skaggs smoke marijuana at his mother's house, and at the various places that he and Beverly lived while they were married.

/s/ PEGGY WALLS

EXHIBIT D

AFFIDAVIT

I, Glenda Beaty, after being duly sworn, state:

I.

That I am 22 years old and have been a resident of Crittenden County for 15 years.

II.

That Junior Skaggs is a former brother-in-law of mine in that he was married to my sister, Beverly. I believe they got married in April of 1973, and I have known him for at least that long.

III.

While Junior and Beverly were married I witnessed on numerous occasions Junior smoking marijuana. I have seen him smoke marijuana in front of his mother at his mother's home and at the different places that Beverly and Junior lived while they were married.

IV.

As recently as a month ago, Junior Skaggs offered and tried to give me marijuana.

/s/ Glenda Beaty

EXHIBIT E

AFFIDAVIT

I, Beverly Jarman, after being duly sworn, state:

I.

That I am 18 years old and been a resident of Crittenden County, Arkansas for 13 years. That I married James "Junior" Skaggs on April 30, 1973 in West Memphis, Arkansas, and that I had known Junior Skaggs for 1 year prior to our marriage.

III.

During our marriage on numerous, numerous occasions my husband, Junior Skaggs, smoked marijuana, bought marijuana, sold marijuana, took speed, downers, stole Valiums from his father. The smoking of marijuana by Junior Skaggs was so frequent, along with the use of other drugs, so many times I don't know if I could give an exact date as to every time he smoked marijuana.

IV.

I was aware of the fact that Junior was an informant for the West Memphis Police Department, and during this period of time Junior Skaggs did turn in people's names to the West Memphis Police Department saying that he had purchased marijuana from them when in fact he did not even know these people. During this time he was constantly cutting lids of marijuana and keeping it for himself and turning in only parts of a lid to the West Memphis Police Department. This marijuana that he would cut, he would either smoke himself or put it in a bag and turn in someone's name and receive more money from the West Memphis Police Department.

V.

Prior to the September, 1975 term of criminal court I met with Joe Rogers upstairs at the Bank of West Memphis and discussed with Mr. Rogers each individual case. Mr. Rogers would go down a list and I would inform him as to what I knew about each case, and Mr. Rogers would take down notes on each case. I informed Mr. Rogers at that time that there were some people down on that list that my husband did not even know and that Junior had turned their names in even though he did not know them and had not purchased anything from them.

VI.

During the September term of court I was employed at Bonanza Steak House in West Memphis, Arkansas and was called at night by Jerry Hubbard of the West Memphis Police Department and Jerry Hubbard would inform me of what was going on in court.

VII.

Junior Skaggs told me that he did not know Ricky Graham and that he knew he had not purchased any marijuana from Ricky Graham.

VIII.

I also heard Junior Skaggs call Detective Hubbard on the phone and tell Jerry Hubbard that it was a mistake that John Stropes' name had been turned in and that in fact he had not purchased anything from John Stropes.

/s/ Beverly Jarman

VERIFICATION

EXHIBIT F

AFFIDAVIT

I, Jimmy Hawkins, Clerk of the Supreme Court of Arkansas, hereby certify that the transcript prepared by my office on or about March 1, 1977, in the case of Daniel Hobby v. State of Arkansas, No. CR-76-104, does not include the following materials:

1. Motion for Extension of Time to File Appellant's Brief;
2. Response to Motion for Extension of Time;
3. Motion for Permission to File Amended Appellant's Brief;
4. Response to Motion for Permission to File Amended Appellant's Brief;
5. Motion to Strike;
6. Appellant's Answer to Appellee's Motion to Strike.

The above items were omitted as a matter of course, but in the event they are requested by a reviewing court, every effort will be made by my office to secure any copies needed.

WITNESS my hand this 8 day of April, 1977.

/s/ Jimmy H. Hawkins, Clerk